U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy [redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [redacted] Office: Miami Date: MAR 18 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

PUBLIC COPY

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the decision of the acting district director to deny the application. The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966.

The acting district director determined that the applicant was inadmissible to the United States because he falls within the purview of section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i).

Upon review of the record of proceeding, the AAO, on July 25, 2002, affirmed the acting district director's conclusion that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(E)(i) of the Act, for attempting to smuggle approximately 15 Cuban nationals into the United States.

In a motion to reopen, counsel asserts:

> The applicant admitted that he and his friend, [redacted] departed from the United States on May 30, 1994 and traveled to Cuba to bring their families [redacted] wife and son and the Applicant's parents), but once in Cuba the applicant's parents were unable to jump into the boat due to the physical limitations that as a condition of their age they presented and also as a resulted of the confusion generated with the arrival of the boat, in which more than 10 people who were in the beach, jumped into the boat and requested to be transported to the United States.
>
> At no point in time, the Respondent intended to bring to the U.S. someone other than his own family. Under the circumstances, he did not have other choice but to return to the United States with the people aboard. He did not know the persons that came in the boat nor the financial motive was involved in this situation.

Section 212(a)(6) of the Act provides, in part:

> (E) Smugglers--
>
> (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

[redacted]

Section 212(d)(11) of the Act, 8 U.S.C. 1182(d)(11), provides that the Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of 212(a)(6)(E)(i) of the Act in the case of an alien seeking admission or adjustment of status if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

In a sworn statement before an officer of the Service on May 31, 1994, the applicant responded to the officer's questions:

> Q. What was the purpose of your trip to Cuba?
>
> A. We went to Cuba in order to bring [redacted] and son to the U.S. The other Cubans got into our boat at the same time and there was nothing we could do but bring them to the U.S. also. We could not force them to get out.
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> * * *
>
> Q. What was your destination after leaving Santa Cruz del Norte, Cuba?
>
> A. We were going back to where we left the van and trailer in order to take the people to the Cuban Refugee house.

While counsel, on motion, asserts that at no point in time did the applicant intend to bring to the U.S. someone other than his own family, the record reflects that the applicant admitted that he and [redacted] went to Cuba in order to bring [redacted] wife and son to the United States. The record reflects that [redacted] wife and son were among the 15 Cuban nationals brought into the United States by the applicant and [redacted] Accordingly, the applicant, in this case, knowingly assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

The applicant, therefore, remains inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act. The previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO dated July 25, 2002, is affirmed.